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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Andean Commission of Jurists, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1993]

Enforced or involuntary disappearances in the Andean region

1. The phenomenon of enforced disappearances of persons continues to exist in the Andean region, where the cases of Colombia and Peru can be clearly seen as those with the most alarming statistics: according to reports by national human rights organizations, there were some 113 disappearances in Colombia and 280 in Peru in 1992. In both countries, the practice of this grave violation of human rights which, by virtue of its characteristics and scale, can be described as persistent in the case of Colombia and systematic in that of Peru, has been in evidence for a number of years already.

2. The situation in Venezuela is also disturbing, but there disappearances cannot be qualified as massive and systematic. However, although there is no record of any complaints of disappearances being submitted to the United Nations Working Group on Enforced or Involuntary Disappearances during

the period October 1991-September 1992, Venezuelan human rights organizations speak of a total of 14 reported disappearances, or twice as many as in the previous two years.

3. While we have drawn attention on earlier occasions to the worrying observation that the phenomenon of the detention and disappearance of persons occurs even under constitutional regimes, we must expand it to encompass the characteristics of Andean societies, which are at the basis of these violations and, more generally, are common to all Andean countries.

4. The persistence of such characteristics poses the latent danger that, in certain circumstances, this phenomenon may become recurrent in all countries in the Andean region whenever such situations occur in societies whose weak civil and political institutions have encouraged the emergence of dissident, subversive or terrorist groups which in turn leads to a response from the State centred around repression by the military and the police.

5. At the same time, it is important to emphasize that the phenomenon of the detention and disappearance of persons is linked to other kinds of human rights violations which are "traditional" in our societies, such as arbitrary detention, torture or attacks on personal integrity. Ultimately, this phenomenon is "built" on and fostered by these practices, and its development can therefore be said to constitute not the beginning but the exacerbation or worsening of violations to which the population is regularly and permanently exposed.

6. Consequently, the primary aim of policies for the prevention of the practice of detention and disappearance such as those mentioned below must be the protection of all fundamental rights, and this requires effective coordination of internal efforts and efforts by international bodies and mechanisms. With this in mind, the need to respect the freedom and personal integrity of individuals in all circumstances should be affirmed as an end in itself and a means of eliminating conditions in which the phenomenon of the detention and disappearance of persons can emerge.

7. The adoption by the United Nations General Assembly, in December 1992, of the Declaration on the Protection of All Persons from Enforced Disappearances is an important step in this direction in that, inter alia, it makes it obligatory for States to keep centralized registers of prisoners, identify their regular and official detention centres and define the powers of their authorities in respect of the lawful detention of individuals. The challenge now is to exercise permanent supervision over the actions by the States involved to put such commitments into effect.

8. With the same aim, from the standpoint of international protection systems, initiatives such as the recent establishment of the Working Group on Arbitrary Detention by the United Nations Commission on Human Rights warrant special attention. The positive experience with the work of the Working Group on Enforced or Involuntary Disappearances established by the same Commission in 1980 can provide effective guidance for the activities of the new Working Group and opens up the prospect of appropriate coordination between these international bodies that will contribute to the task of appreciably reducing

the scope for the arbitrary State conduct which serves as a basis for the practice of detention and disappearance of persons.

9. Another particularly important matter is the situation of non-governmental organizations working in the field of human rights, and more especially organizations of relatives. Given the important role that they play in efforts to curtail the phenomenon of enforced disappearances, the particularly vulnerable conditions and growing risk to which they are exposed need to be addressed. It is therefore essential for Governments and international organizations to strengthen and protect their activities.

10. To this end, it is to be hoped that the "prompt intervention" procedure recently introduced by the United Nations Working Group on Enforced or Involuntary Disappearances in order to take immediate action to safeguard the integrity and other fundamental rights of persons reporting violations or counselling victims in each country should be consistently effective in helping the organizations and persons threatened.

11. In addition, the subject of impunity should be tackled not only as a problem of justice and ethical values affecting the whole of society, but also as a serious impediment to curbing the practice of enforced disappearances and permitting the identification and tracing of the victims. The failure to characterize such acts as specific offences, or the inadequacy with which, in the case of Peru, this type of criminal offence has been addressed, having first been abolished and later re-established with serious limitations as to application, are the corollary of physical forms of impunity which demonstrate a lack of political will to punish the culprits.

12. In this connection, it is essential to go on pressing for the adoption of measures against impunity and demanding that the offence should be characterized in terms permitting practical application in concrete cases; consideration should also be given to classifying it as a crime against humanity and hence not subject to the statute of limitations, as well as to the feasibility of establishing a universal jurisdiction and making it impossibile for culprits to benefit from political asylum or refuge.

13. In this context, the conduct of the judicial administrations in each of the countries involved is especially important. The lack of independence and weakness of these judicial bodies, age-old problems which are without doubt serious impediments to the achievement of fully democratic forms of coexistence and strengthening of the rule of law among the States of the Andean region, are compounded by the specific circumstances affecting their functioning in a context of mounting violence involving systematic and repeated violations of human rights such as those which concern us here.

14. In such circumstances, there is a marked tendency to reduce the sphere of activity of the civil judicial authorities, which are superseded by police and military structures unqualified to deal with legal disputes as judicial organs.

15. In territories under the direct control of the law enforcement authorities by virtue of states of emergency, the power of the civil authorities, and particularly of judges and prosecutors, is seriously weakened

or simply non-existent. In such situations, this must be borne in mind in weighing the demands which international organizations can reasonably make of persons denouncing enforced disappearances, as far as the requirement of exhaustion of domestic remedies is concerned.

16. In any event, it is not enough for national legislation to establish protective mechanisms for use in such situations if, at the same time, there are serious obstacles to actually applying them. We often encounter difficulties undermining the operativeness of such procedures both at the legislative level and in terms of the practical aspects of their execution. For instance, in some countries such as Peru, amendments to the original law or regulations issued under it have sought to restrict access by individuals to the remedy of habeas corpus or to prolong habeas corpus proceedings.

17. In this connection, resolution 1992/35 adopted by the Commission on Human Rights at its previous session is especially important, in that it calls upon all States that have not yet done so to establish procedures such as habeas corpus to meet the situation of arrested or imprisoned persons so that the courts decide without delay on the lawfulness of the measure and order the immediate release of the person concerned in the event of arbitrary deprivation of liberty.

18. This resolution adopts a position similar to that taken by the Inter-American Court of Human Rights in its advisory opinion No. OC-8/87; and goes further by indicating that States should maintain the right to such a procedure at all times and under all circumstances, including during states of emergency.

19. To this end, efforts should be made to ensure that the legislation of every country expressly provides that this safeguard should not be subject to derogation in any circumstances, bearing in mind that at the present time none of the countries of the Andean region has legislation stipulating such non-derogability for habeas corpus or similar remedies, and that this has seemed to make such remedies ineffective where states of emergency have frequently been declared to combat subversion, terrorism or drug trafficking. This is the very situation that occurs in countries such as Colombia and Peru.